



August 3, 2000

Mr. Roy William Cabler  
Henslee, Fowler, Hepworth & Schwartz  
800 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-7444

OR2000-2950

Dear Mr. Cabler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137670.

The Hutto Independent School District (the "district") which you represent, received a request for information related to a terminated district employee. The request is made by an attorney representing this individual. You indicate that the district has released "the majority of documents" in this individual's personnel file. However, you seek to withhold certain financial and benefit information of third parties. You contend that this information is excepted from public disclosure under section 552.101 of the Government Code. You have submitted materials which contain the information you seek to withhold to this office for review. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common law right to privacy. This right protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Financial information concerning an individual is generally protected by a common law right of privacy. See Open Records Decision Nos. 545 (1990), 523 (1989). However, as information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest, the doctrine of

common law privacy does not generally protect this type of information. Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989). Resolution of claims that a financial transaction between an individual and a governmental body is protected by the common law right of privacy hinges on the role that the information plays in the relationship between the individual and the governmental body. For example, a public employee's participation in a voluntary investment program or deferred compensation plan that his or her employer offers, but does not fund, is not considered a financial transaction between the individual and the governmental body; information regarding such participation is protected by the common law right of privacy. Open Records Decision No 545 at 3-5 (1990). However, mandatory deductions where the employee has no options are generally not protected. Conversely, where an employee exercises an option for certain coverage, or a particular insurer, that information is confidential. In this case, we find that the submitted information contains some information that is protected by the common law right of privacy, and other information that may be so protected. We have marked the submitted documents to identify that which we have determined must be withheld and that for which we cannot make a determination, and must be withheld only if the district determines that the information involves a transaction where the employee exercised an option or participated in a voluntary plan.

The submitted materials also include information that may be excepted by section 552.117 of the Government Code. This section excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee, other than a peace officer, who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). We have marked the submitted materials to indicate the information that may be subject to section 552.117.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 137670

Encl Submitted documents

cc: Ms. Kathryn E. Ryle  
707 W. 14<sup>th</sup> Street  
Austin, Texas 78701

(w/o enclosures)